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ABSTRACT

In recent years, provincial laws in Alberta, Canada, have required children of certain ages to attend school. A legal issue related to attendance that is seldom addressed in provincial legislation is the definition of nonattendance. Many jurisdictions in the United States offer statutory definitions of truancy that range from 3 to 10 days' absence without valid excuse. Knowledge about causes of truancy is key to determining its treatment. Approaches to truancy include seeing nonattendance as a result of maladjustment and viewing the school itself as an explanation. The Attendance Board of Alberta is made up of community members, professionals, school staff, and others to provide a team approach to truancy and a caring alternative to the court system. The board has power to issue orders with the force of a court order to (among other things) direct students to attend school and impose fines on parents. Fair hearings are ensured by certain procedural requirements, such as a written notice of the hearing served to the student's parents and a notice of every order and its reasons sent to everyone substantially affected by it. (35 References) (EJS)

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"THE ATTENDANCE BOARD": AN ALTERNATIVE TO TAKING TRUANCY TO COURT

by Audrey Dean

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"THE ATTENDANCE BOARD": AN ALTERNATIVE TO TAKING TRUANCY TO COURT

Before looking at the newly established Attendance Board in Alberta, other legislative provisions that deal with school attendance will be considered. In recent years, provincial laws have required children of certain ages (usually between 6 and 16) to attend school. "The belief has been widespread that the future prosperity of an industrial or post industrial society, and the well-being of its individual citizens, necessitates the education of children."[1]

The Supreme Court of Canada in Jones v. R (1986), 2 S.C.R. 284 held that compulsory attendance requirements do not offend the Charter of Rights and Freedoms as the state has an overriding influence in the education of school age children. "The state, however, cannot require attendance at a public school but must allow parents to choose from alternative forms of effective schooling that reflect the parents' religious belief."[2]

Provincial school legislation provides a number of circumstances when a child of compulsory school age is excused from attending school. Marvin Zuker in his book, The Legal Context of Education, at page 62, reports that in Ontario "the most frequent defence to a prosecution is that the child was unable to attend by reason of sickness or other unavoidable cause."[3]

EA 022 877

A legal issue related to attendance which is seldom addressed in provincial legislation is the definition of what is non-attendance at school. Truancy is difficult to define and is a matter of concern for attendance officers who have to make a judgment as to when to pursue an attendance case. Two provinces, Nova Scotia and Saskatchewan make an attempt at definition. Section 162(1) of the Saskatchewan Education Act provides

> 162(1) When any pupil has been absent from school for more than four school days in any month, the principal shall unless satisfied that such absence is unavoidable or justified, immediately report the absence to the local attendance counsellor.

In Nova Scotia, the Education Act, R.S.N.S., Chp. 81, 1967, section 99(1)(b) provides

> (1) Where a child
>
> > (b) is absent from school contrary to this Act or regulations for five days or more during a period of twelve months after the date upon which a warning notice naming the child was served on the parent or guardian;
>
> a person designated pursuant to the provisions of section 87 may, by notice in writing served upon the child and upon his parent or guardian, require the parent or guardian to appear and bring the child named in the notice before a judge of a Family Court at a place named in the notice and at a time not earlier than four clear days after the date of the service of the notice.

Many of the jurisdictions in the United States offer statutory definitions of what constitutes non-attendance or truancy. These definitions range from absence for 3 days without valid excuse in the States of California, Delaware, Kansas and Kentucky to 5 days in Tennessee, Texas, Wisconsin and Wyoming, 7 days in Maine and 10 days in North Carolina. Other States do not specify a number of days in attempting to define non-attendance but provide that if a child fails to attend school repeatedly (Idaho) or regularly (Iowa) it constitutes non-attendance.

Key in determining how to treat truancy or non-attendance is to be knowledgeable about the causes. "Until the mid 1970's published research into truancy appeared sporadically."[4]

David Brown in his article "Truants, Families and Schools: a critique of the literature on truancy" described four distinct theoretical approaches to truancy. The first approach sees truancy as resulting from the maladjustment of those involved. "This conclusion is based on Tyerman's findings that persistent truancy and truancy generally correlated with unhappiness, unsociability and failure to persevere."[5]

The second approach to truancy is that truants come from the lower end of the social scale. "The third model that attempts

to explain truancy is based on the argument that the truants' anti-school values provided by their parents are reinforced by similar values found in the wider working class community."[6] The fourth model that explains truancy is different from the first three in that factors external to the school are not considered, it is the school itself that is seen as the explanation for truancy.

Other researchers indicate that "characteristics of truant children might include physical, mental and emotional handicaps; learning disabilities; poor self-image; personality conflicts; lack of motivation; and disregard for the seriousness of unexcused absences (Belkin, 1981; Reinhart, 1976; Thomson and Stanard, 1975)."[7]

"Some individuals believe that absenteeism is not the consequence of any single cause but results from a complexity of factors. Therefore, any solution to this problem will by necessity be comprehensive and require the help of a team of specialists."[8]

The Attendance Board provides this team approach. Membership on the Attendance Board was drawn from a wide variety of professionals and the community and includes: social workers, psychologists, teachers, pediatricians, police officers, nurses,

lawyers, representatives from the native community and persons from the community with an interest in and understanding of truancy.

Lynn Lambert advises in the article, "A Look at Improving School Attendance for Truants," that we must stop viewing absent students as little criminals and we must work on changing attitudes. "Truants need success, not suspension: Truants need caring not courts".[9] The Attendance Board attempts to provide that caring and provides an alternative to the court system.

There has been a dissatisfaction with the courts as a vehicle for dealing with truancy in a number of jurisdictions and a variety of alternatives have developed. Although most provinces in Canada still use the court system as a means of dealing with truancy other alternatives are being discussed in some of the provinces.

In the United States, many jurisdictions have legislated alternatives to taking truancy matters before the court or they have clearly defined steps that must be taken prior to referral to court. Examples of states that have legislated alternatives include California, Florida, Illinois, Maine, Maryland, Minnesota and Wisconsin. California's legislation requires a

school attendance review board to provide coordinated community services to meet the needs of pupils with attendance problems. The school attendance review board may request the juvenile court having jurisdiction to issue subpoenas to compel the attendance of the minor in question (student); minors' parents, guardians, or other persons having control; the school authority referring the minor to the Board and any other person required as a witness.

In Florida, the legislation specifies the intent of the Legislature to use interagency planning and sharing of resources to reduce truancy. Illinois legislation prohibits any preventive action including out of school suspension, expulsion or court action being taken against chronic truants unless available support services and other school resources have been provided to the student.

In Maine, the court process is not used. The superintendent is to refer the truant to the school board which shall hold a hearing. A parent may appeal the decision of the school board and the board shall appoint a fair hearing officer to hear the appeal.

Maryland still has the court process in legislation for truancy matters. Maryland does, however, have a state-level interagency

cooperative committee (MICOSA) formed for the purpose of combating chronic school absenteeism throughout the state.

In Minnesota, fact-finding and mediation services must be provided by the Commissioner of Education prior to proceeding to court on an attendance matter. Although the court process may be used in Wisconsin, prior to any proceeding, there are steps to be taken. Every school board is directed by statute to address the needs of children at risk through curriculum changes, alternative programs, and to develop an integrated plan involving parents, pupils and community services. Each county is directed to establish a truancy committee consisting of a representative from each school district. District Attorney's office, sheriff's department, local law enforcement agency, circuit court, Social Services and juvenile court.

In Alberta, the SCHOOL ACT, CHAPTER S-3.1, 1988, provides for the establishment of an Attendance Board.

> Section 111(1) The Minister may (b) appoint an Attendance Board consisting of as many members as the Minister considers necessary and designate from among the members a chairman and 1 or more vice-chairmen.

The Attendance Board in Alberta was established by Ministerial Order on September 22, 1989. A chairperson and 5 (five) vice-chairpersons were appointed to correspond with the regional

offices of education. Members representing each of the 5 (five) regions were also appointed in the Order.

An Attendance Board may hear matters referred to it with respect to the failure of a student to attend a school (section 108).

A great deal of power has been given to the Attendance Board in the legislation. The Attendance Board has the power to make orders and on the filing of an order with the clerk of the Court of Queen's Bench, the order of the Attendance Board has the same force and effect as a Court of Queen's Bench Order (section 110(3)). The Attendance Board may make an order doing one or more of the following:

> (a) directing the student to attend school;
>
> (b) directing the parents of a student to send the student to school;
>
> (c) subject to sections 23, 29 and 30, directing the student to take an education program, course or student program set out in the order;
>
> (d) reporting the matter to a director under the Child Welfare Act;
>
> (e) imposing on the student's parent a monetary penalty not exceeding $100 per day up to a maximum of $1000 to be paid to the Crown for each day that the student does not attend school;
>
> (f) giving such other direction not referred to in clauses (a) to (e) as the Attendance Board considers appropriate in the circumstances.

Subsection (f) gives the Attendance Board broad powers to make any direction as long as the Board considers it appropriate in the circumstances.

The intent is that the Attendance Board provide a less legalistic approach to attendance than was previously the case when attendance matters were taken before the court. To ensure a fair hearing; there are, however, certain procedural requirements governing hearings under section 109 of the School Act. Section 109 provides:

(1) For the purpose of conducting a hearing before the Attendance Board, the following apply:

(a) notice in writing of the date, time, place and purpose of the hearing shall be served on the parent, on the student who is the subject of the hearing, if the student is capable of understanding the situation, and on any other person the Attendance Board directs at least 10 days before the commencement of the hearing;

(b) the Attendance Board has, with respect to the holding of a hearing, the same power as is vested in the Court of Queen's Bench for the trial of civil actions

(i) to summon and enforce the attendance of witnesses,

(ii) to compel witnesses to give evidence on oath or otherwise, and

(iii) to compel witnesses to produce documents, records and things;

(c) the Attendance Board may require a board or a person responsible for the operation of a private school to produce to the Attendance Board, prior to a hearing, copies of all reports, statements, correspondence or other documents or things relating to the matter being heard;

(d) if a person fails to attend, to answer questions or to produce an item as required under clause (b) or (c) or subsection (2) or (3) the Attendance Board may apply to the Court of Queen's Bench for an order committing that person for contempt in the same manner as if that person were in breach of an order or judgment of that Court;

(e) the Attendance Board shall receive any evidence presented to it that is relevant to the matter being heard;

(f) the rules of evidence applicable to judicial proceedings do not apply;

(g) all oral evidence received shall be taken down in writing or recorded by electronic means;

(h) all the evidence taken down in writing or recorded by electronic means and all documentary evidence and things received in evidence at a hearing form the record of the proceeding;

(i) a person on whom notice of the hearing is served and his agent are entitled to examine the record;

(j) the Attendance Board may from time to time adjourn matters that are before the Board;

(k) a hearing shall be held in public;

(l) notwithstanding clause (k), a hearing or any portion of it may be held in private if in the opinion of the Attendance Board it is in the public interest to do so;

(m) a person who is likely to be affected by a hearing before the Attendance Board is entitled

(i) to appear before the Attendance Board,

(ii) to be represented by counsel or agent, and

(iii) to make representations to the Attendance Board;

(n) a witness attending a proceeding before the Attendance Board may be paid the same fees and allowances as a witness summoned to attend at the Provincial Court unless otherwise prescribed in the regulations;

(o) notice of every order together with a copy of the written reasons for it, if any, shall promptly be sent to

(i) a person on whom notice of the hearing was served, and

(ii) any person that the Attendance Board considers is substantially affected by it.

(2) The Attendance Board may require the student or a parent of the student or both to attend proceedings before the Attendance Board.

(3) Any person other than the student and a parent of the student who, in the opinion of the Attendance Board, has knowledge of the matter before the Attendance Board is a compellable witness in proceedings before the Attendance Board.

The Attendance Board in Alberta has generated considerable interest amongst the professional community and the public. The first Attendance Board hearing took place on January 30, 1990.

FOOTNOTES

1 Nicholls, Alan C. and Wuester, Terry J., Charter Issues in Education, Eduserv, Inc., B.C., 1989, p. 62.

2 IBID.

3 Zuker, Marvin A., The Legal Context of Education, Ontario Institute for Studies, Toronto, 1988, p. 62.

4 Brown, David, "Truants, Families and Schools: a critique of the literature on truancy," (1983) Vol. 35, No. 3, Educational Review, p. 225.

5 IBID - p. 226.

6 IBID - p. 231.

7 Little, Linda F. and Thompson, Rock, "Truancy: How Parents and Teachers Contribute," (1983) Vol 30, No. 4, The School Counsellor, p. 285.

8 Marshall, Anthony R. A. and Whitehead, Leroy E., "Sticks and Carrots," (1980) March/April, Ontario Education Journal, p. 15.

9 Lambert, K. Lynn, "A Look at Improving School Attendance for Truants," (1982) Vol. 38, No. 2, School Guidance Worker, p. 49.

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Jones v. R (1986), 2 S.C.R. 284.

STATUTES

CANADA

1. The Education Act - R.S.N.S. CHAPTER, 81, 1967.

2. The School Act - R.S.A. CHAPTER S-3.1, 1988.

3. The Saskatchewan Education Act R.S.S. CHAPTER D-13.01, 1983.

UNITED STATES

School legislation: California (1989); Delaware (1988); Florida (1989); Illinois (1988); Kansas (1988); Kentucky (1988); Maine (1988); Maryland (1989); Minnesota (1989); North Carolina (1988); Tennessee (1988); Texas (1989); Wisconsin (1988); Wyoming (1988).